IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17/02/2004

Coram

The Honourable Mr.Justice V.S.SIRPURKAR
and
The Honourable Mr.Justice F.M.IBRAHIM KALIFULLA

Criminal Appeal No.1224 of 2003
and Criminal Appeal Nos., 1225 & 1226 of 2003

Criminal Appeal No.1224 of 2003

1. Madurai Ganesan

2. Alagusundaram

3. Ganesamoorthy .. Appellants

-Vs-

The State of Tamil Nadu
rep. by Deputy Superintendent
of Police,
'Q' Branch C.I.D.,
Kalaimagal Nagar,
Madurai - 625 017. .. Respondent

Criminal Appeal No.1225 of 2003

1. Veera. Ilavarasan

2. Boominathan

3. Sevanthiappan .. Appellants

Vs.

The State of Tamil Nadu
rep. by Deputy Superintendent
of Police,
'Q' Branch C.I.D.,
Kalaimagal Nagar,
Madurai - 625 017. .. Respondent

Criminal Appeal No.1226 of 2003

1. P.S.Maniam

2. S.Nagarajan .. Appellants

Vs.

The State of Tamil Nadu
rep. by Deputy Superintendent
of Police,
'Q' Branch C.I.D.,
Kalaimagal Nagar,
Madurai - 625 017. .. Respondent

Appeals filed against the orders made in Crl.M.P.Nos.23, 24 &
25 of 2003 in Special C.C.No.1 of 2003 dated 15.7.2003.

!For Appellants .. Mr.K.S.Dinakaran

^For Respondent .. Mr.I.Subramanian
Public Prosecutor
assisted by
Mr.S.Jayakumar
Addl.Public Prosecutor

:J U D G M E N T

V.S.SIRPURKAR,J

This judgment shall dispose of the three criminal appeals namely Appeal Nos.1224, 1225 & 1226 of 2003 filed by Madurai Ganesan, Alagusundaram, Ganesamoorthy (Appellants in Crl.Appeal No.1224/2003), Veera. Ilavarasan, Boominathan, Sevanthiappan (Appellants in Crl.Appeal No.12 25/2003) and P.S.Maniam & S.Nagarajan (Appellants in Crl.Appeal No.1 226 of 2003)respectively. In these appeals, filed under Section 34 of the Prevention of Terrorism Act, 2002 (hereinafter referred to as " POTA" for the sake of brevity), whereby almost common orders passed by the Special Judge dismissing the three common applications filed for discharge, presumably under Section 227 of the Code of Criminal Procedure, are under challenge.

2. The appellants herein are involved in the offence under Section 2 1 of POTA. In Appeal No.1224 of 2003, the offence is under Section 21 (3) & (4) of POTA, while in the other appeals, the offences are under Section 21(2)(a) of POTA. In their applications, the appellants claim that there was no prima facie case even for framing the charge, as there was nothing on record of the investigating officer or in the charge sheet to suggest that they had even distantly committed the offence.

3. Before we proceed to consider the matter, it will be proper to note that after these applications were dismissed in the month of July 2002, the Court proceeded to frame the charge against these persons and has

proceeded with the trial. Presently more than 10 witnesses have already been examined in the trial and the trial is proceeding on the day to day basis. It is also an admitted position that there is an order passed by this Court directing the trial to be concluded by the end of June 2004.

4. The prosecution case, stated in the charge sheet, as well as the charges framed against these appellants, suggests that there was a meeting held on 29.06.2002 between 8.45 p.m. and 11.30 p.m. on behalf of Marumalarchi Dravida Munnetra Kazhagam ('MDMK party' for short) at Tirumungalam Town in Madurai District. The prosecution contends that one Thiru.Vaiko, the first accused in Special C.C.No.1 of 2003, along with other accused persons (some of the appellants) delivered lectures in this meeting and not only declared that they were supporters of a banned organisation called "Liberation Tigers of Tamil Ealam" (' LTTE' for short), but invited support for this organisation. As regards the same, the charge is that they arranged, managed or assisted in arranging or managing this meeting, which they knew was for supporting LTTE and to further the activities of LTTE. As the charge sheet shows, it is the prosecution case that all the accused persons and more particularly, the MDMK party, support the said organisation and the first accused Thiru.Vaiko, who is the leader of MDMK party, is spearheading in declaring and inviting support for the said banned organisation. It is the admitted position that the said organisation is declared as a Terrorist Organisation under Section 18 of POTA and figures at Serial No.21 in the schedule.

5. The materials gathered from the charge sheet suggests that the prosecution seeks to examine the witnesses, who were present in the meeting, wherein some of the accused persons have delivered lectures declaring their support and some others attributed in arranging the meeting. The prosecution has also proposed to examine the Government Stenographers, who had covered the meeting, so as to prove the utterances of the accused persons, who delivered lectures in the said meeting. The other witnesses are sought to be examined to prove that all the appellants are generally party men belonging to MDMK party and are given to further the cause of LTTE and it is out of their conviction that they had taken part in the meeting, either by delivering lectures or by arranging the same. In short, the general activities of these appellants, who are the accused persons, have also been highlighted to suggest that they are active sympathizers of LTTE.

6. In the charge sheet it is pointed out that the present appellants are the followers of Thiru.Vaiko, who has not only been the supporter of LTTE, but had active connection with the leaders of LTTE, who are based in Sri Lanka and that the said Thiru.Vaiko had also travelled surreptitiously to Sri Lanka to espouse the cause of LTTE. The prosecution has also collected lot of materials to suggest that even in the other meetings, Thiru.Vaiko and his followers have given speeches declaring their unstinted support to the said banned organisation and have propagated support for this organisation.

7. In their applications, the appellants refute the speeches attributed to them. They also denied that some of them arranged this meeting. Their further case is that even if the speeches attributed to them are taken to be proved, yet that would not come within the mischief of Section 21 of POTA in any way. When the applications were filed before the trial Court, a petition challenging the constitutional validity of POTA in general and some

provisions in particular, at the instance of Thiru.Vaiko, was pending. In that application, the appellants have raised certain contentions touching upon the constitutionality of various provisions also.
8. However, during the pendency of these appeals before this Court, the Supreme Court in People's Union for Civil Liberties Vs. Union of India (2004 (1) CTC 241) up-held the constitutionality of the POTA, as also Section 21. In the said judgment, the Apex Court has interpreted Sections 3, 18 & 21 along with other sections. Curiously enough before us both sides rely on that judgment.
9. In view of the pendency of the petition challenging the constitutionality of various provisions under POTA before the Supreme Court, the learned Judge refused to go into those aspects and has come to the conclusion that there was a prima facie material available on record to frame the charges. In his order, the learned Judge had referred to the said material, which is in the shape of the statements of the witnesses, the notes of the stenographers and also the video tapes covering the meetings, and which were relied upon by the prosecution. He has also taken note of the evidence suggesting that M/s. P.S. Maniyam and S.Nagarajan had assisted in arranging the meetings, which they knew was for inviting support for LTTE. As many as five points were formulated by the trial Court, they being:-

1. Petitioner's plea that Section 21 of the Prevention of Terrorism Act, 2002 is offending Article 19(1)(a) of the Constitution of India as ultra vires, and therefore no charges can be framed to penalize them under the said "invalid provisions" could be sustained in this proceeding?
2. Whether the petitioners are entitled for an order for reference to Hon'ble High court of Madras under Section 395 of the Code of Criminal Procedure, for the determination of Constitutional validity of the provisions of Section 21 of the Prevention of Terrorism Act, 2002 in the light of Article 19(1)(a) of the Constitution of India?
3.Whether prima facie there exist grounds to discharge the petitioners from the case or for further proceeding against them?

4.Consequently, whether the petitioners are entitled for an order for discharge from the case proceedings?
5. What are the reliefs available to the parties?

Needless to mention that the first two points were refused to be decided by the learned Judge, while on point nos.3 and 4, the learned Judge held against the appellants. The trial Court has noted that in addition to the other materials, 43 documents were relied upon by the prosecution and had also filed 23 material objects, besides recording the statements of 154 witnesses. The trial Court further noted that all the accused persons including Thiru.Vaiko, who is not a party before us, are office bearers of MDMK party. He took note that in the said meeting dated 29.06.2002, in which Thiru.Vaiko spoke last, he declared before the public that he was its and will remain to be the supporter of LTTE and also declared that MDMK party would always be in favour of LTTE. The trial Court has also noted that in almost all the meetings, held on various dates, which were covered by the stenographers, Thiru. Vaiko and few other appellants declared their unstint support and invited support to the banned organisation. After appreciating the said materials, the trial Court

came to the conclusion that there was prima facie material available and dismissed all the applications.

10. The learned counsel Mr.K.S.Dinakaran, did not reiterate the arguments on the constitutionality, since that question has already been closed by the Supreme Court. He, however, heavily relying on the Supreme Court judgment, pointed out that a mere public declaration of support to an organisation could not be covered under Section 21 of POTA, unless such support is invited with guilty mind and intention for doing or supporting the terrorist act. Learned counsel again reiterates that even if all the speeches are taken to be proved, it would not spell out such intention and therefore, the Court should have desisted from framing the charge. We were taken through the extracts of the speeches made. Learned counsel also argued that it could not be said that any of the accused arranged the meeting knowing that the said meeting was arranged for inviting support for the terrorist organisation.

11. As against this, learned Public Prosecutor Mr.I.Subramanian, began with raising a preliminary objection to the maintainability of these appeals. According to the learned Public Prosecutor Section 34(1) of POTA bars appeal against the interlocutory order. The learned Public Prosecutor invites our attention to sub-Section(1) and subSection (3) of Section 34, which are as under:-

(1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence, or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(3) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, sentence or order including an interlocutory order of a Special Court.

Learned Public Prosecutor suggests that the orders passed by the trial Court, rejecting the applications made for discharging the accused and directing the trial to proceed after framing the charges, is purely an interlocutory order and that being so, there can be no appeal maintained by this Court in the wake of express language of the above sub-Sections. Learned Public Prosecutor, further, points out that there would be no propriety for this Court now to decide these appeals, particularly because the trial has already began and secondly, the said trial has been directed to be completed by June 2004 by the High Court in the other proceedings. The learned Public Prosecutor stresses that the court should not entertain the appeals as any expression of the Court, even if made regarding the prima facie existence of material, would tend to prejudice the accused or the case may be the prosecution one way or the other. Lastly, learned Public Prosecutor submits that there was enough material for framing the charge and on that account, supports the order passed by the trial Court.

12. In view of these rival submissions, three questions fall for our consideration:-

(i) Whether the present appeals under Section 34 of POTA are maintainable?

(ii) Whether it would be proper for this Court to go into the questions, in view of the commencement and substantial progress of the trial?

(iii) Whether there is actually, a prima facie case for framing the charge?

13. As regards the maintainability, the preliminary objection of the learned Public Prosecutor was that the order of the trial Court, by which the trial Court directed the trial to proceed further, would be an interlocutory

order within the meaning of Section 34 (1) & (3) of POTA. Learned Public Prosecutor heavily stresses on the nonobstante clause in sub-section(1) and suggests that the impugned order is an interlocutory order, as it is not a final order terminating the proceedings. The argument is that this order does not decide anything finally and is merely a step in aid of the prosecution and the trial. The argument is that the phraseology of sub-Section (1) of POTA is practically identical to the phraseology of Section 11(1) of Special Courts Act, 1979 (22 of 79), the only difference being that under the Special Courts Act, 1979, the contemplated appellate Court is the Supreme court, whereas in the present Act, it is the High Court. The other difference is that the appeal under Section 11(1) of the Special Courts Act is as of right, whereas the words "as of right" are absent in the present section. He points out that in the reported decision of V.C.Shukla Vs. State through CBI 1980 SCC(Crl) 695), the judgment delivered by the Constitution Bench of the Supreme Court, it was held that an order framing the charge or as the case may be dismissing the application for discharge would amount to an interlocutory order. The whole thrust of the argument is solely based upon this decision.

14. As against this, Mr.K.S.Dinakaran, learned counsel appearing on behalf of the appellants, heavily relies on the reported decision in Bhaskar Industries Limited Vs. Bhiwani Denim & Apparels Ltd. and Others (2001 SCC (Cri) 1254). Learned counsel points out that in view of the latest authoritative judgment, the question is no more resintegra and therefore, the orders, such as the impugned order, cannot be said to be an interlocutory order. Learned counsel also points out that in Baskar Industries case, the whole law relating to the subject was considered by the Supreme Court including the aforementioned decision of V.C.Shukla Vs. State through CBI (supra). In view of this, it will be proper for us to first take into consideration that decision.

15. That was a case where a prosecution was filed by the appellant against 15 accused persons for the offence under Section 138 of the Negotiable Instruments Act by way of a criminal complaint. The Managing Director of a company was the second accused. Holding that the service made by affixing the summons on his residential address was a good service, the Magistrate issued bailable warrants to the accused. The second accused filed an application for exemption from personal appearance. Pending that application, the Magistrate ordered him to be released on bail, if arrested, and directed him to be present in the Court for the purpose of furnishing security by executing a bond. This order was challenged by way of a revision by all the accused persons and the Sessions Judge, recorded that the Advocate for the second accused had given an undertaking stating that the second accused shall appear before the trial Court. The Sessions Judge allowed the revision petition and set aside the impugned order of the trial Court. No other direction was given by the Sessions Judge excepting setting aside the order of the Magistrate. The order of the Sessions Judge was challenged in the High Court, and the High Court also declined to interfere with the order of the Sessions Court. It was urged before the Supreme Court by the complainant that the respondents could not go to the High Court in revision, as the order dated 28.4.2000 passed by the trial Court was an interlocutory order, and as such there could be no revision on account of the positive language of Section 397(2) of the Code of Criminal Procedure. It was under these circumstances that the Supreme Court was asked to decide as to whether the order passed by the trial Court was an

interlocutory order or not.

16. The Supreme Court in paragraphs 9 and 10 of Bhaskar Industries case referred to the decisions of Madhu Limaye Vs State of Maharashtra (1977 (4) SCC 551), V.C.Shukla Vs State through CBI (1980 Supp. SCC 92), Rajendra Kumar Sitaram Pande Vs Uttam (1999 (3) SCC 134) and K. K.Patel Vs State of Gujarat (2000 (6) SCC 195), and noted the observations of the Supreme Court in the last mentioned case to the following effect:

"It is now well-nigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage (vide Amar Nath Vs. State of Harayana (1977 (4) SCC 137), Madhu Limaye Vs. State of Maharashtra (1977 (4) SCC 551), V.C.Shukla Vs State through CBI (1980 Supp.SC 92) and Rajendra Kumar Sitaram Pande Vs. Uttam (1999 (3) SCC 134). The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objection raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable"

Relying this, learned counsel Mr.K.S.Dinakaran, says that if the applications, which were rejected by the trial court had actually been accepted, then the proceedings would themselves have culminated and therefore, the order even rejecting the said applications would become an interlocutory order, at least in terms of the three earlier mentioned cases and more particularly, in K.K.Patel's case.

17. As against this, the contention raised by Mr.I.Subramanian, learned Public Prosecutor is that in fact the Supreme Court did not decide the question as to whether a particular order was an interlocutory order in that case at all. According to the learned Public Prosecutor, in fact that question was left undecided. Learned Public Prosecutor relies on paragraph-11 of Bhaskar Industries case, which is to the following effect:-

"At any rate, the objection regarding maintainability of the revision petition have been raised before the Court which invoked such a revisional jurisdiction. Inasmuch as the same was not done, we leave that question undecided now"

According to the learned Public Prosecutor, there is nothing in the decision of Bhaskar Industries to suggest as to what constitutes an interlocutory order. Learned Counsel Mr.K.S.Dinakaran, however, suggested that even if Bhaskar Industries case was not a final authority, the cases of K.K.Patel Vs. State of Gujarat (supra), and Rajendra Kumar Sitaram Pandey Vs. Uttam (supra) were the final authority for the proposition that where by upholding the objections raised by a party, the proceedings themselves would culminate, and any order passed on such objections would not amount to an interlocutory order. It will be, therefore, first our task to take into consideration the law laid down in both the above mentioned cases.

18. As regards, Rajendra Kumar Sitaram Pandey's case, K.K.Patel's case, as also the Bhaskar Industires case, it will have to be first noted that in all these cases, the concerned order was passed not by the Special Judge under any law, but by a regular criminal Court. In Rajendra Kumar Sitaram Pandey's case, the order which was challenged was the order issuing summons by a Magistrate on the basis of a private complaint for an offence under Section

500 of the Indian Penal Code. The Supreme Court took into account the earlier law laid down and declared that such order is not an interlocutory order. There is a specific sentence in paragraph-6 of the judgment to the following effect:-

"In V.C.Shukla Vs. State, this Court has held that the term " interlocutory order" used in the Code of Criminal Procedure has to be given a liberal construction in favour of the accused in order to ensure complete fairness of the trial and the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory, but intermediate or quasi-final"

We would deal with this observation when we take into consideration the case of V.C.Shukla in the further part of the judgment.

19. In K.K.Patel's case also, the position was no different. There a complaint was filed for offences under Sections 166, 167 and 219 of Indian Penal Code and other ancillary offences. Again, the earlier mentioned cases, were referred to by the Supreme Court and observations were made in paragraph-11, which we have already quoted. Therefore, the common thread in the above mentioned three or four decisions (excepting V.C.Shukla's case) is that the orders there under were passed by the regular criminal Courts and those cases were completely governed by the Criminal Procedure Code. As against this, when we see V.C.Shukla's case, it is clear that in that case, though the term " interlocutory order" fell for consideration of the Supreme court, it was as used in Section 11 of the Special Courts Act. The Constitution Bench while considering the import of the term "interlocutory order" took resume of the whole law on the subject including Amar Nath's case and Madhu Limaye's case and first approved of the law in that case. A reference was made even to S.Kuppuswami Rao Vs. King (AIR 1949 FC 1), which was by for the first Indian decision on the subject. There can be no doubt that the law laid down by the Supreme Court in Madhu Limaye's case was approved in no uncertain terms. In Paragraph 6, the Supreme Court observed thus:-

" Even so, the ratio decidendi in the aforesaid case was, in our opinion, absolutely correct and we are entirely in agreement with the learned Judges constituting the Bench that the order of the Sessions Judge framing charges, in the circumstances of the case, was not merely an interlocutory order but partook of the nature of a final order or, at any rate, an intermediate order so as to be taken out of the bar contained in Section 397(2) of the Code"

After referring to the other older cases on the subject, the Supreme Court observed in paragraph-8 thus:-

"The question, however, with which we are concerned in the present appeal is essentially different. The order of the Special Judge framing the charge is a reasoned order and not a mechanical or a casual order so as to vitiate the order of the Special Judge. In the instant case, we are concerned with a much larger question, viz., whether or not the term "interlocutory order" used in Section 11(1) of the Act (emphasis supplied by us) should be given the same meaning as this very term appearing in Section 397(2) of the Code. In other words, the question is whether Section 11(1) of the Act tightens or widens the scope of the term "interlocutory order" as contained in Section 397(2) of the Code and as interpreted by this Court in the decisions, referred to above"

The Supreme Court then went on to consider Section 11(1) of the Special Courts Act, which was in the following terms:-

"11. Appeal : - (1) Notwithstanding anything in the Code, an appeal shall lie as of right from any judgment, sentence or order, not being interlocutory order, of a Special Court to the Supreme Court both on facts and on law.
(2) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, sentence or order of a Special Court.
(3) Every appeal under this Section shall be preferred within a period of thirty days from the date of any judgment, sentence or order of a Special Court.
Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days"

A reference was made to the aims and objects of the Act, as also to the speech of the Union Home Minister at the time of introduction of the Bill to lay a stress on the fact that this Act was necessary for speedy judicial determination of such prosecutions covered under the Act, as the ordinary Criminal Courts could not have been reasonably be expected to bring the trial to an early conclusion. It was reiterated that the circumstances under which the Act was passed like the existence of Emergency requires the Special Court to handle the cases under the Act and further that the cases should be disposed of in a speedy manner. While interpreting Section 11(1) of the Special Courts Act, the Court specifically took into account the non obstante clause and held that the purpose of exclusion provided by the non obstante clause was fully consistent with the object of the Act namely to secure the quickest dispatch and an expeditious disposal of the case so as to cut down all delays which may be caused by providing for appeal against the interlocutory orders also. In paragraph-20, the Supreme Court observes:-

"As the non obstante clause expressly excludes the provisions of Code of Criminal Procedure, we cannot call into aid the provisions of Section 397(2) of the Code which would amount to frustrating the very object which Section 11 seeks to advance"
20. The Supreme Court then relying on the observations of Sastri,C.J in Aswini Kumar Ghosh Vs. Arabinda Bose (AIR 1952 SC 369) summed up in paragraph 22 thus:-
"(1) We should exclude the statute concerned from consideration; in the instant case 'The Code'.
(2) We should construe the words used according to their natural and ordinary meaning instead of referring to the statute which is sought to be excluded"
The Court, then considered the various English cases. While considering the natural and ordinary meaning of the term 'interlocutory' in paragraph-30, it came to the conclusion that in the English cases, the word 'interlocutory' appears to have been used in its natural sense and was given the meaning attached to it in ordinary parlance. After making reference to the Indian cases, including Kuppuswami Rao's case, referred to above, the majority judgment summed up the proposition as follows:-
"(1) that an order which does not determine the right of the parties but only one aspect of the suit or the trial is an interlocutory order;
(2) that the concept of interlocutory order has to be explained in

contradistinction to a final order. In other words, if an order is not a final order, it would be an interlocutory order; and
(5) that even if the Act does not permit an appeal against an interlocutory order the accused is not left without any remedy because in suitable cases, the accused can always move this Court in its jurisdiction under Article 136 of the Constitution even against an order framing charges against the accused. Thus, it cannot be said that by not allowing an appeal against an order framing charges, the Act works serious injustice to the accused"
Ultimately the court came to the conclusion in paragraph-35 that the impugned order in that case of framing a charge was purely an interlocutory order, as it did not terminate the proceedings and caused the trial to go on, until it culminates in acquittal or conviction. The Court then observes:-
"It is true that if the Special Court would have refused to frame charges and discharged the accused, the proceedings would have terminated, but that is only one side of the picture. The other side of the picture is that if the Special Court refused to discharge the accused and framed charges against him, then the order would be interlocutory because the trial would still be alive"
In paragraph-45, the Supreme Court again reiterated thus:-
"Taking into consideration, therefore, the natural meaning of interlocutory order and applying the non obstante clause, the position is that the provisions of Code of Criminal Procedure are expressly excluded by the non obstante clause and therefore, Section 397(2) of the Code cannot be called into aid in order to hold that the order impugned is not an interlocutory order. As the decisions of this Court in the cases of Madhu Limaye Vs. State of Maharashtra and Amar Nath Vs. State of Harayana were given with respect to the provisions of the Code, particularly Section 397(2), they were correctly decided and would have no application to the interpretation of Section 11(1) of the Act, which expressly excludes the provisions of the Code of Criminal Procedure by virtue of non obstante clause".
21. In our view, these observations would clinch the issue insofar as the present Section 34(1) and (3) of POTA are concerned. We have already pointed out a striking similarity in the language of Section 11 (1) of the Special Courts Act and Section 34(1) of POTA. An identical non obstante clause exists in Section 34(1) also. The only other difference is that in Section 11(1) of the Special Courts Act, the appeal is as of right to the Supreme Court. In our opinion, the difference in phraseology would not change the situation, as regards the interpretation given by the Supreme Court to the term 'interlocutory order'. We wish to point out that like the Special Courts Act, the present Act was brought on the anvil to fight against terrorism and organised crimes. There are number of powers to be found in the provisions of the Act from the ordinary Criminal law. There can be, however, no dispute that this law was brought for prevention of and deal with terrorist activities and for the matters connected there with, which is the preamble of the Act. It has been passed by the Legislature particularly to fight menace of terrorism and the terrorist activities of National and International nature, and therefore, the requirement of speedy disposal of the cases under this act is innate. It is only in the last decade and a half that the Terrorism and the Terrorist Organisations have surfaced, which included even the Organisations, which were operating from beyond the Indian borders, as also within the same. Considering this object, we have no doubts in our mind that the cases under the Act were meant to be disposed of expeditiously. There are

Special Courts created under the Act more particularly under Section 2 3 of POTA with the obvious object of speedy disposal of the cases before the Special Court. The appointment of the Presiding Officer under Section 23 of POTA is required to be met with the concurrence of the Chief Justice of the High Court. The Special Court is to be constituted by a notification, which would provide for the trial of a case or class or group of cases. There is a provision for appointing Public Prosecutors under Section 28 of POTA for acting as the Public Prosecutor in every Special Court. Under Section 29 of POTA, a special power has been given to the Special Court to take cognizance of any offence, without the accused being committed to it for trial. Under the same section, trial for the offences, which are punishable with three years or less, are to be held in a summary way, notwithstanding Sections 260 or 262 of the Code of Criminal Procedure. Sub-Section (3) of that Section provides that the Special Court would have the powers of a Court of Session. Under Section 31 of POTA, precedence is provided for the trial by Special Court for the offences under this Act. All these provisions would only go to show and rei terate the object of the Act namely, speedy disposal, which was the same object, as found by the Supreme Court in the case of Special Courts Act. We have, therefore, no doubts that though under ordinary course, the impugned order would not have amounted to an interlocutory order or the case may be could have been deemed to be an intermediate order, the present appeal dismissing the discharge applications, and holding that there exists grounds for further proceedings and thereafter proceeding to frame charges as it did, would amount to an interlocutory order and thereby an appeal against this order would not be possible because of the express bar in Section 34(1) of POTA. In view of this finding, it will really not be necessary for us to decide question nos.2 and 3. However, to complete the narration, we are dealing with those two questions together.

22. It is reported and not disputed before us that after the impugned orders were passed in these appeals, the Court proceeded to frame a charge. It is also a further admitted position that the High Court has directed the said trial to be conducted on a day-to-day basis and to be concluded before June 2004. In pursuance of that, eight witnesses have already been examined, and the evidence of the 9th witness is already in progress. Thus, not only has the trial commenced, but it has reached a stage of recording of evidence. At this juncture, it would be really difficult for us to appreciate the whole material with a view to examine as to whether there existed a prima facie case against the accused. Any expression on our part, would certainly affect the trial. In fact, there has been no stay of the trial in these appeals also and that is how the trial is proceeding. In our view, under the circumstances of this case, there would be no propriety to examine as to whether there exists a prima facie case or not.

23. This is apart from the fact that we are completely satisfied with the order of the trial Court holding that there existed prima facie material for proceeding with the trial. The Supreme Court has laid down a test for framing of the charges under Section 228 of the Code of Criminal Procedure and has also defined the duty of the Court under Section 227 of the Code of Criminal Procedure in three decisions. They being:-

(1)1977 SC page 2018 (State of Bihar Vs. Ramesh Singh)

(2)1996 SC page 1744 (State of Maharashtra Vs. Som Nath Thapa); and lastly

(3)AIR 2000 SC page 665 (State of M.P Vs. S.B.Johari)

It seems that the Court approved in the last mentioned case, the law stated in State of Bihar Vs. Ramesh Singh (supra) along with two other cases namely AIR 1979 SC 366 (Union of India Vs. Prafulla Kumar Samal) and 1980 SC 52 (Superintendent & Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja). It is reiterated that at the stage of Sections 227 and 228, the Court was required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. What is meant thereby is that the exercise of discharge can be made only if the prosecution case being accepted as it is and they do not appear to be any circumstances to convict the accused.

24. What the Court has to consider at this stage is the broad probabilities of the case. When we see the order passed by the lower Court, a detailed analysis has been made therein of the available material from the charge sheet, which includes the utterances of the various accused persons in the meetings, and more particularly in the meeting dated 29.06.2002. If those lectures are considered at their face value, then there would certainly be a prima facie material against the accused. Probably therefore learned counsel for the appellants was at pains to point out that initially the case of the defence have been that they were incorrectly attributed and none of the witnesses had said or uttered the words attributed to them in the charge sheet, particularly the notes of the stenographers or the utterances emerged from the video tapes. An exercise will have to be made to find out the intention of the accused, if the accused very openly supported the philosophy of LTTE. There is material on record to suggest that an unstint support was declared. Even if we go by the interpretation of the Supreme Court on Section 21 of POTA in Vaiko's case, the question will still have to be gone into as to what was the intention of the accused in publicly declaring their support to the banned organisation like LTTE. Therefore, it cannot be said that even if the whole prosecution case is accepted as true, there would be no scope for convicting the accused of the offences charged with. The prosecution has also collected materials about some of the appellants arranging for the meeting. If the prosecution is able to establish the guilty intention on the part of the accused, there would be no question of discharge at this stage. Therefore, we agree with the Special Judge, when he holds that there is no case for discharge of the accused and decides to frame charges as he has done.

25. We are, therefore, of the clear opinion that these appeals have no merit and have to be dismissed. They are accordingly ordered to be dismissed.

Index:Yes
Internet:Yes

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Copy to:

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